

**BEDFORD ZONING BOARD OF APPEALS
MINUTES OF MEETING
JULY 28, 2011**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Jeffrey Cohen, Chair; Jeffrey Dearing, Vice Chair; Brian Gildea, Clerk;
Angelo Colasante; Kenneth Gordon; Stephen Henning

ABSENT: Carol Amick

Mr. Cohen introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #029-11 – CONTINUATION – Fastsigns of Waltham, for Bedford Professional Building, 50 Loomis Street, seeks a Special Sign Permit per Article 40.4 Section 3 (A) of the Sign By-Law to split and increase size of wall sign.

Shishir Mehta, of FastSigns of Waltham, greeted the Board and said that the last meeting had been continued because there was some question as to whether Sections 3A1 and 3A3 of the Sign By-Law served in tandem or were mutually exclusive. Mr. Cohen read excerpts from Town Counsel's opinion on the matter (see attachment) and explained that it is Town Counsel's opinion that the sections can work in tandem. He said that Town Counsel also makes it clear that just because the Board can allow such signage doesn't mean that it must; Section 3A1 states that the Board must use its discretion that the signage "significantly enhances the appearance" of the structure and is "in concert with the architecture of the specific building."

Mr. Cohen said he drove up and down the street several times to get familiar with the property and the side of the building facing D'Angelo drive is extremely difficult to see. He asked the applicants what they hope to achieve by putting signage on that side of the building. Ms. Garber replied that she wants her tenants to have as much visibility as possible. She said that last year she applied to the Zoning Board to have an attractive, 30-square-foot freestanding sign at the property which would have listed the tenants and found out at the last minute that the Board wasn't able to grant anything larger than the 20 square feet allowed under the Sign By-Law, so since she doesn't have a freestanding sign, she wants to fit as many tenant names on the building as possible. She added that many of the tenants are insurance-based and need to have visibility not only for good business but also for insurance subscribing and credentials.

Mr. Gildea asked the applicant whether she still intends to keep the "Bedford Professional Building" sign above door. Ms. Garber said she does, as it is grandfathered

and she has no plans to ever take it down.

Mr. Gordon asked whether there is a lobby or foyer in the building. Ms. Garber said there is an area when one first enters the building before one goes down the halls to either the right or left. Mr. Gordon asked whether there is a directory/tenant sign in this lobby. Ms. Garber replied that there is. Mr. Gordon said that most professional buildings that he goes to have the tenant names listed on the inside of the building on a directory. He said he cannot think of any medical or professional building in Bedford that has the tenants listed on the outside, so he imagines that the directory sign in the inside lobby could suffice, so long as the outside of the structure lists the building name.

Ms. Garber said she understands the need for both parties to compromise, and she has compromised here by taking some of her tenants off the sign.

There was discussion about the size and dimension of the letters and what is allowed under the Sign By-Law.

Mr. Cohen opened the hearing to the public.

Mr. Mehta said the sign will be brass and will look very attractive. He said it fits well with the building and the area, so it won't contrast or be inconsistent with other signage in Bedford.

Mr. Cohen asked how far the letters would project from the wall. Mr. Mehta said they will project approximately three-quarters of an inch from the wall.

Mr. Cohen asked whether the applicants would have any objection to a condition stating that all future tenants must use the same lettering. The applicants confirmed that such a condition would be fine.

Mr. Cohen asked the Chair whether he still wanted to see a provision that each tenant is allowed two lines on the sign. Mr. Cohen said he would like to see such a condition.

With no further comments or questions from those in attendance, Mr. Cohen closed the public hearing.

DELIBERATIONS:

Mr. Dearing said that under some circumstances this proposal could feel like a lot of signage, but he doesn't find it objectionable because each section is all on one placard.

Mr. Gildea said that he thinks the front signage looks attractive, but the signage does concern him a bit, as it seems like more than the building really needs. He said he could probably go either way on the signage on the side, but he is perfectly content with the signage on the front.

Mr. Colasante said he has a different opinion: He believes that multiple tenant names on a single structure is not appropriate; his interpretation of the Sign By-Law is that it is trying to prevent tenant directory signs on buildings. He stated that if the writers of the Sign By-Law had wanted to allow a tenant directory on the outside of the building, they would have simply put in a provision for it. He said that at the last meeting someone made the comparison to a strip mall with multiple tenant spaces but he doesn't think that comparison is accurate at all, because this is one building without several individual entrances. Mr. Colasante commented that he does not know of any professional or medical building, in Bedford or otherwise, where the tenants are all listed on the outside; these buildings, as Mr. Gordon pointed out, always have a directory on the inside. He added that the architect of the building probably did not intend for it to have this much signage, or else he or she would not have designed a building with so many windows.

There was extensive discussion about tenant signs in other business areas and shopping centers, and how those signs compared to the signs on this building.

Mr. Cohen said the By-Law unfortunately doesn't distinguish between retail and medical/professional buildings, so there is no way to know whether the By-Law's intention is to allow tenant names for this kind of structure. Mr. Henning said that he feels it is important to note that the Sign By-Law doesn't specify a preference for or a prejudice towards tenant directory signs on a building; it doesn't mention them either way. Mr. Colasante said he wonders whether directory signs are not mentioned because the By-Law doesn't intend for them.

Mr. Colasante said the tenant signs may look attractive now in theory, but tenants tend to change often, so he worries about how this signage will look in the future when the lettering is taken down and new letters are put up for a new tenant. He said it may leave faded marks on the bricks and also may make the signage no longer look symmetrical, if one tenant is added to one side and another is taken down from the opposite side. He stated that over time these signs may not look nearly as attractive as the applicant seems to believe they will. Mr. Cohen talked with the sign manufacturer about how the letters will be attached to the building.

The Board talked at length with the applicants about the dimensions of what signage is and is not allowed by right and by Special Permit. There was also conversation about whether the "Bedford Professional Building" sign counted as a third sign on the front of the building.

There was further discussion about the Sign By-Law and what the Board can or cannot allow. Mr. Cohen stressed that just because the Board can grant something doesn't mean that it necessarily will; the By-Law specifically gives the Board discretion in doing what it thinks will look best and is in keeping with the neighborhood and the Town.

Mr. Cohen said that the Board needs four votes out of five to approve this sign proposal, and it doesn't sound to him like they have the four necessary votes. He said that the applicants have three options: they can allow the Board to vote on this proposal;

withdraw the application; or continue to another night and come back with a “Plan B.” He pointed out that if the proposal is voted down, they will not be able to come back to the Board with the same or a similar application for two years.

Mr. Gordon asked whether there was any downside to continuing. He said the applicant may have something to lose by either withdrawing the petition or having the Board vote on it, but there seems to be no drawback to continuing the meeting except taking longer to get the signs; he noted that they can always withdraw the application if they decide to do something that the By-Law allows by right.

Mr. Cohen called a short recess of this hearing to allow Ms. Garber to discuss the situation with Mr. Laskey and the sign manufacturer to make a decision. He said that the Board would hear the next case in the meantime.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #004-11 – Tara and Nathan O’Loughlin, 290 Concord Road, seek a Special Permit per Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to construct addition within side yard setback.

Mr. O’Loughlin greeted the Board and explained that their family is expanding now that they have a six-week-old baby as well as a two-year-old, so they would like to add an addition to their house to accommodate the larger family. He said they have considered several different options for how to place an addition and they have decided that this proposal is the most logical plan. He said they hope to construct a garage with a master bedroom above it, which would give them three bedrooms in total; the proposed garage would extend five and a half feet into the side yard setback, leaving a 9.5 setback instead of the required 15.

Mr. Cohen asked what the connecting corridor between the current house and the addition would be. Ms. O’Loughlin said they aren’t sure yet whether it will be a mudroom or a dining area, but most likely the latter since it is directly off the kitchen. She noted that they spoke with the next door neighbors, whom this addition would most directly affect, and have received their blessing for the project.

Mr. Gildea talked with the applicants about the nearby Caesar Jones Way subdivision and how that development affected the surrounding lots and houses.

Mr. Cohen opened the hearing to the public.

With no comments or questions from those in attendance, Mr. Cohen closed the public hearing.

DELIBERATIONS:

Mr. Dearing noted that the lot is non-conforming, which means that this project clearly

requires a Special Permit. Mr. Cohen said that the two requirements of a Special Permit are that the project is not injurious or detrimental to the neighborhood and is in keeping with the intent and purpose of the By-Law. He said he feels that this project meets those conditions and he is comfortable with this request. The other Board members agreed.

MOTION:

Mr. Gildea moved to grant to Tara and Nathan O'Loughlin, 290 Concord Road, a Special Permit per Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to construct addition within side yard setback s substantially shown on Exhibits A through E.

Mr. Dearing seconded the motion.

Voting in favor: Cohen, Dearing, Gildea, Colasante, and Gordon

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #002-12 – Capelli Salon, 297 Great Road, seeks a Special Sign Permit per Article 40.5 Section 2 of the Sign By-Law to illuminate wall sign.

Michael Vacca, the representative for Capelli Salon, said that he is here on behalf of Gerry Drucker, the owner of the 297 Great Road shopping center. He said he is here with a very simple sign request to illuminate a wall sign for the new Capelli Salon sign. He stated that this will be illuminated by the same light fixtures that are used for all the signs at the shopping plaza. Mr. Vacca handed out a cut sheet for the illumination fixture, noting that the fixture will be painted the same white as the background, with a 110 watt fluorescent light that points directly at the sign. He noted that, per the Sign By-Law, the illumination will not exceed 75 foot lamberts, which is shown on the contract provided in the application.

Mr. Gildea asked whether the sign manufacturer is allowed to submit the certification regarding the 75 foot lamberts. Mr. Cohen said that the Sign By-Law states it may be either an electrician or the sign manufacturer. Mr. Gildea asked the applicant to sign the document regarding the foot lamberts, for record-keeping purposes. Mr. Vacca agreed and signed the document.

Mr. Cohen asked whether the lighting fixture would be on the same timer used for the rest of the lighting. Mr. Vacca replied that it would, so there will be no question that the lighting will be turned off during the required hours.

Mr. Cohen opened the hearing to the public.

Lynn Garber, of 2 Pond Circle, asked whether this sign conforms to the dimensional regulations of the Town. Mr. Cohen said that it does. Ms. Garber asked why a Special Permit needs to be granted for this. Mr. Cohen replied that the Sign By-Law states that a Special Permit is required to illuminate any sign in Bedford, and the applicant has provided the necessary documentation for the Board to rule on the lighting.

With no further comments or questions from those in attendance, Mr. Cohen closed the public hearing.

DELIBERATIONS:

Mr. Cohen said that the Board has been given all the documentation it needs, including a cut sheet on the lighting fixture, a certification that the illumination will not exceed 75 foot lamberts, and a letter from the property owner authorizing Mr. Vacca to represent him at this meeting. He said that the requirements for a Special Sign Permit are the same as any other Special Permit: the sign must be in keeping with the intent and purpose of the By-Law and not be injurious or detrimental to the neighborhood. He said he feels this sign and the illumination meets those requirements. The other Board members agreed. Mr. Gildea said he would include a condition in his motion that the light fixture be on a timer. Mr. Cohen said that is always a good idea; he asked the applicant whether that condition would be amenable. Mr. Vacca said he would be very amenable to that, since it will be hooked into the same lighting system anyway.

For clarification purposes, Mr. Henning asked whether the light itself would be white. Mr. Vacca said it is. Mr. Henning asked whether the Board wanted to put a condition on the permit allowing only white light. Mr. Laskey noted that the Sign By-Law specifies that all lights may only be white, so such a condition would not be necessary.

MOTION:

Mr. Gildea moved to grant Capelli Salon, 297 Great Road, seeks a Special Sign Permit per Article 40.5 Section 2 of the Sign By-Law to illuminate wall sign, subject to the condition that the light fixture be on a timer.

Mr. Dearing seconded the motion.

Voting in favor: Cohen, Dearing, Gildea, Colasante, and Gordon
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Sign Permit at the Code Enforcement Department.

At this time, Mr. Cohen asked Ms. Garber whether she wanted to withdraw, continue, or have the Board vote on the application. Ms. Garber said she has some options that may not involve Zoning Board approval; she noted that delivery drivers such as Staples, FedEx, and mail carriers always come to the front door under the "Bedford Professional Building" sign, so that sign could be construed as a three-square-foot delivery sign. Mr. Cohen said that would have to be discussed with the Code Enforcement Director. Ms. Garber said she hopes to work out some signage that will not need the Board's approval, but agreed to continue this hearing to August 25 on the chance that she may have to come back before the Board.

MOTION:

Mr. Gildea moved to grant a continuation to Fastsigns of Waltham, for Bedford Professional Building, 50 Loomis Street, seeking a Special Sign Permit per Article 40.4 Section 3 (A) of the Sign By-Law to split and increase size of wall sign to August 25, 2011 at 7:30 PM.

Mr. Dearing seconded the motion.

Voting in favor: Cohen, Dearing, Colasante, and Gordon

Voting against: Gildea

Abstained: None

The motion carried, 4-1-0.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #028-11 – Lutheran Church of the Savior, 426 Davis Road, seeks to appeal the Building Inspector's decision to require a buffer of trees along property line.

Douglas Burns, the Council President for the Lutheran Church of the Savior, greeted the Board members and thanked them for hearing his case tonight. He introduced Rod Sundet, a Bedford resident and a member of the Board of Trustees for the Church. Mr. Burns explained that he is here, as the legal notice suggests, to overturn the Building Inspector's decision in regards to the trees on the property line. He said the tree line has been an ongoing issue since the fall of 2004, when construction was completed on an addition to the church.

Mr. Burns explained that several of the trees have died over the past several years and it is extremely costly to replace them. He referenced a detailed letter he wrote as a cover letter to the application packet and went through the points outlined in this letter (see attachment). He noted that there have been environmental changes – some natural, some due to the construction of the Church addition – that have caused the trees to die. He said that it would be very expensive to replace the trees, and there is no guarantee that the trees will not die again if they were to do so. He commented that there is also now a playground along some of the area where the trees originally were, which makes replanting those particular trees especially difficult.

Mr. Burns went on to explain that the primary abutter to the property is Don Lamb, at 29 Glenridge Drive, and Mr. Lamb was adamant about having any dead trees removed. He said they removed the dead trees and now Mr. Lamb is unhappy that there is not enough screening between the two properties. He stated that he had a discussion with Mr. and Mrs. Lamb about installing a fence to help shield the properties; he said he stood on the Lambs' porch with them and decided exactly where the fence would go. He noted that he then received the Church's approval to install this very costly fence and had it installed exactly where the Lambs wanted it to go, with the most attractive side of the fence facing the Lambs' property. He said it has been over two years since the fence was installed and now Mr. Lamb is complaining once again.

Mr. Burns referenced Massachusetts General Law, Chapter 40A Section 3 and its exemptions about local Zoning By-Laws. He said he is not sure whether this section applies but he was advised to bring it to the Board's attention.

Mr. Burns said that the Church met every Order of Conditions from the Conservation Commission and every item on the Planning Board's site plan approval list, and they have been good neighbors to the Town and their abutters. He said he went out of his way to erect an expensive fence that the Town did not require him to erect, just to be a good neighbor. He said that whatever the church does to appease Mr. Lamb never seems to be enough to make him happy. He said he understands Mr. Lamb's desire to see a tree line there, but Mr. Lamb has never once offered to plant a tree himself or split the cost with the Church. He said he feels the Church is being pushed by an unreasonable individual into an extremely expensive endeavor that still may not please him when all is said and done.

Mr. Gordon asked whether anything was ever put down in writing with regard to the fence. Mr. Burns said that there was nothing in writing; he spoke with Mr. Lamb in person and they had a verbal agreement, which in hindsight he feels was a mistake on his part. Mr. Gordon asked whether Mr. Burns ever showed the Lambs a diagram or description of where the fence would go. Mr. Burns said he did not, because they talked about the placement of it in their discussion and reached an understanding of exactly where the fence would be placed.

The Board members examined the site plan and the location of the trees and fence. They talked with Mr. Laskey about his involvement in this process over the years. Mr. Laskey

said that some of the letters he has sent to the Church are included in the application packet, and these help show the timeline of events. He explained that he thought this issue had been resolved when the fence was put up, as he had not heard from Mr. Lamb since that time, but Mr. Lamb then contacted him again last October. He said that at this time he discussed the matter again with Richard Joly, the former Planning Director, and Mr. Joly confirmed that there was a requirement as part of the Planning Board's approval of the Church addition to have a screen of trees. Mr. Laskey said that he has had discussions with the Church and Mr. Lamb since that time and ultimately had to ask the Church to apply to the Zoning Board to overturn his decision to require these trees to remain.

There was discussion about the Planning Board's original approval for the Church addition, in which the first condition reads:

"Existing evergreen trees near the side of the church are to be protected by installing a temporary fence at the drip line of the evergreen trees during construction. If trees get damaged, they are to be replaced."

The Board members talked about whether the requirement for a tree line was only meant to be during construction or to stay indefinitely.

Mr. Dearing talked with the applicant about the wetlands on the property and how it may or may not affect the tree line.

Mr. Cohen opened the hearing to the public.

Don Lamb, of 29 Glenridge Drive and the direct abutter to the Church, said that from day one his issue has always been the trees. He said there used to be a beautiful, natural tree line between the properties and now it is sparse, bare, and unattractive. He said that the Church took poor care of those trees and allowed vines growing at the base of the trees to kill them. He said he feels the Church was negligent to allow the trees to die and even more negligent to not replant new trees in their place. Mr. Lamb explained that the purpose of the fence was to shield headlights from view of their property, because at night the headlights would always wash across his yard. He said the fence did mostly take care of the headlights issue but he had never intended for the fence to be used in place of a tree buffer, as they are two entirely different issues; the fence was for the headlights and the trees are to block the sight of the large addition from his yard.

Mr. Lamb handed out photographs to the Board that showed his property in the 1990s when the trees were full and alive, and photographs showing his property now. He said the difference is extremely evident, and these pictures prove how much his property has diminished since.

There was conversation about the timeline of the construction of the addition and the events that followed.

Mr. Cohen asked whether the Fire Department had any input about the playground being put in at the edge of the property. Mr. Burns said the Church met with the Fire Department before the playground went in and their only requirement was to have an opening in the fence so that an emergency vehicle could pass through if necessary.

Mr. Gordon asked whether the fence was part of the original Planning Board approval. Mr. Burns said it was not; the Church put the fence up voluntarily.

There was discussion about the timeline of Mr. Lamb's complaints to the Church and to the Town. Mr. Gordon asked Mr. Lamb whether he had made any complaints since 2007 when the fence was put up. Mr. Lamb said he had not. He said that the reason he brought this back to the Church's attention is that he found out in late 2010 that there was a Planning Board approval that specifically stated the tree line must remain.

Mr. Colasante said that what the Board is ultimately deciding here is whether the language in the Planning Board's approval about the trees was meant only for construction or was meant to hold true indefinitely.

Mr. Dearing said that the area in contention isn't really in the wetlands, so he doesn't feel that the wetlands would prevent the trees from growing. He asked whether the applicants have a letter from an expert that says the trees are dying because of the water. Mr. Burns said he does not. Mr. Dearing asked the applicant whether he had looked into finding any native species that would thrive in wetter conditions. Mr. Burns said he hadn't.

Patricia Marks, of 40 Glenridge Drive, said she has been a resident at her address for 34 years and was very sad to see the beautiful tree line die. She stated that the Planning Board's decision specifically included language about keeping the tree line there, so she believes it was the Town's intent to keep that buffer. She said she supports Mr. Lamb on this matter.

Mary Ann Kiely, of 44 Glenridge Drive, said she also recalls a time when the trees were full and helped to shield the Church from view of the neighbors. She said she also would like to see some kind of shielding, adding that the trees don't have to be very large or overly expensive; they could simply be six or even four-foot-tall trees, or even bushes, just to help create a better buffer.

Mr. Burns asked why the burden is on the Church to provide the screening when it is the abutters who want it. Mr. Gildea replied that the reason is because the Church built the addition and therefore accepted the responsibility to meet the Town's requirements for that addition. Mr. Dearing agreed, noting that he feels the intent of the By-Law is to maintain a screen between different zones such as this. He said that he agrees with Mr. Gildea's statement that the Church accepted the responsibility of maintaining the tree line and should honor it. Mr. Colasante also agreed, noting that he believes the intent behind the Planning Board's condition was to not only have a tree line there during construction but for that tree line to be maintained.

Mr. Burns said the Church has already spent a great deal of money to try to screen the property and planting several new trees will not be cheap. Mr. Colasante said that he understands that the Church obviously wants to save money wherever it can but, with all due respect to the applicant, if the Church had replanted one or two trees at a time when they died, it wouldn't have been as much of a financial burden as trying to replant many of them now.

The Board talked with Mr. Sundet about the size and type of trees that could be used to screen the property.

Mr. Colasante said that credit should be given to the Church for putting up the fence, as that wasn't a Town requirement, but he does feel that the Church accepted the responsibility of maintaining the tree line when it agreed to the Planning Board's approval.

Yolanda Tsang, of 46 Glenridge Drive, said she has lived at her house for close to 40 years and has never once complained to the Town about any of her neighbors, including the Church, but she does have to agree that the tree line should be maintained.

Mr. Lamb pointed out that he has been a good neighbor to the Church over the years; he said Mr. Burns once approached him after services one Sunday several years ago and asked that he not mow the lawn while church was in service, and Mr. Lamb promised him he never would, and he has never done so again. Mr. Burns said that that statement is true.

Mr. Colasante said it doesn't sound to him that the Board is trying to follow the exact letter of the Zoning By-Law, which requires a very heavy buffer of trees; he said they are being more lenient because they understand the cost involved, but they do feel that some kind of buffer is important for all involved.

Mr. Gordon said the ideal solution here is for the Church and the abutters to work out some kind of plan to phase in trees over the next few years. He suggested that Mr. Laskey be the liaison between the two parties to help resolve this issue. He said it is important to have both parties sign some sort of written agreement so that there can be no verbal miscommunication as there seems to have been in the past. Mr. Cohen agreed, noting that perhaps the best way to handle this is to give the applicants and the abutters time to work something out together and continue this application to one or two months from now to ensure that progress is being made. Mr. Gildea pointed out that autumn is an excellent time for new plantings, so the timing here may be in everyone's favor in order to get this process started.

Mr. Cohen noted that the Board has received an email, through the ZBA assistant, from Carol and Martin Rogers (see attachment). He read the email into the record.

Mr. Cohen read a letter into the record from Lisa A. Shaeffer, of 38 Glenridge Drive (see attachment), dated July 27, 2011.

Andrew Clerkin, of 39 Glenridge Drive, said that the tree buffer is a logical thing to have between a residence and a church, and he feels that it is the Church's responsibility to maintain it.

MOTION:

Mr. Gildea moved that the Board grant a continuance to Lutheran Church of the Savior, 426 Davis Road, seeking to appeal the Building Inspector's decision to require a buffer of trees along property line to September 22, 2011 at 7:30 PM.

Mr. Dearing seconded the motion.

Voting in favor: Cohen, Dearing, Gildea, Colasante, and Gordon

Voting against: None

Abstained: None

PRESENTATION: Mr. Cohen read the notice of the hearing.

PETITION#003-12 – F.W. Webb, 160 Middlesex Turnpike, seeks a Variance from Section 6.2.6 of the Zoning By-Law and from Table II Use Regulations to construct addition within front yard setback.

Fred Hamwey, of Hamwey Engineering, introduced himself and the preconstruction manager for the project, Andrew McBeth of J.M. Coull. He also introduced Edward Welch, a representative of F.W. Webb. Mr. Gildea explained that he has had both professional and personal dealings with J.M. Coull in the past, so he feels it would be best to recuse himself from this hearing.

Mr. Cohen noted that the voting members for this petition will therefore be himself, Mr. Dearing, Mr. Colasante, Mr. Gordon, and Mr. Henning.

Mr. Colasante noted that the letter in the application packet gives F.W. Webb permission to apply for this Variance, not Hamwey Engineering; he asked whether this letter is sufficient to allow Mr. Hamwey to appear. After some discussion with the applicants, Mr. Cohen decided to allow Mr. Hamwey to move forward tonight with the understanding that the property owner, Robert Mucciarone, would submit a letter allowing Mr. Hamwey to appear on his behalf. The applicants agreed to this condition.

Mr. Hamwey explained that F.W. Webb hopes to add a 74,000 square foot addition to their property at 160 Middlesex Turnpike, which will be a combination of an office and showroom. He said the setback requirement for the zone for this property is 100 feet, and this new addition would protrude 12 feet on the right corner and 7 feet on the left corner, making the new numbers 88 feet and 93 feet from the property line, respectively. He said

this is the most reasonable place on the building to put the addition, as it doesn't really fit logically anywhere else and it would be more appealing to have the showroom right out front.

Mr. Hamwey showed an enlarged copy of the Town's Assessor's map which shows the zoning districts. He pointed out that this property is the sole Industrial District property in the area, and it is surrounded by Commercial and Residential Districts. He pointed out that this is, therefore, the only building in the area with the required 100-foot setback requirement; most of the others have 35-foot front setback requirements.

Mr. Cohen explained that for any Variance request, the applicant must meet seven requirements; the requirement that is usually the most difficult is to prove a hardship on the land that is forcing the construction to one specific point on the property. He asked whether there is a hardship on this land that requires this Variance. Mr. McBeth replied that the addition needs to be in the proposed location because there is simply nowhere else on the building to put it; he showed the site plan and talked about the various other locations, noting that they all had either delivery entrances or loading docks. Mr. Cohen asked whether there was any hardship on the land itself. Mr. Hamwey said that the lot has a great deal of pavement for parking and beyond the pavement is a wetland, so there really isn't anywhere else to put the addition.

Mr. Henning asked about the new lot line versus the old lot line as shown on the plot plan. Mr. Hamwey said that the property line has changed because of the extension of Middlesex Turnpike. There was discussion about the site plan and the placement of the building on the lot. Mr. Cohen pointed out that if the lot line has changed and the setback is now under 100 feet, that may mean that the lot itself is non-conforming, thereby requiring a Special Permit for this project instead of a Variance.

Mr. Cohen opened the hearing to the public.

The Board members and applicants talked with Mr. Laskey about his interpretation of this new non-conforming setback. After further discussion, the Board agreed that perhaps it would be wise to get Town Counsel's opinion on this matter. The Board members generally agreed that they would be more amenable to granting a Special Permit for this project than a Variance, so this change could be very important for the applicant.

Mr. Cohen said that the piece of the Variance "puzzle" that typically hangs applicants up is the hardship on the land, and it appears that this is another case where there does not seem to be a true hardship on the land. Mr. Gordon agreed, noting that the hardship here is more from the layout of the building itself but not from the land.

The Board talked with the applicants about the use of the new showroom and whether it should be considered a Retail Use. It was concluded that it should not be considered Retail Use because the showroom is hardly ever used to sell items directly to the public

and because its primary use is for office. Mr. Welch noted that this building is F.W. Webb's corporate office.

Mr. Cohen suggested that the best course of action may be to continue this hearing to find out Town Counsel's opinion on the Board granting a Special Permit. Mr. Gordon noted that the hearing was advertised as a Variance application. Mr. Colasante asked whether the Board can grant a Special Permit when a Variance has been advertised. Mr. Laskey said that he doesn't think the Board ought to grant a Special Permit when it hasn't been advertised; he suggested that the applicants apply for a new Special Permit application so that it is advertised properly. He added that he would be happy to waive the fee for that application. Mr. Cohen said that this was a good idea so that if Town Counsel decides a Special Permit can be granted, the hearing can be lined up; he suggested that the applicants also continue *this* hearing so that if Town Counsel decides that a Variance is the only course of action, the Board will be able to rule on it at the next meeting.

After discussing the Board members' availability for the next several meetings, Mr. Cohen called for a motion to continue this application to August 25.

MOTION:

Mr. Dearing moved to grant a continuation F.W. Webb, 160 Middlesex Turnpike, seeks a Variance from Section 6.2.6 of the Zoning By-Law and from Table II Use Regulations to construct addition within front yard setback to August 25, 2011 at 7:30 PM.

Mr. Colasante seconded the motion.

Voting in favor: Cohen, Dearing, Colasante, Gordon, and Henning

Voting against: None

Abstained: None

Recused: Gildea

The motion carried unanimously, 5-0-0.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #033-11 – Metro PCS, LLC, for 216 Concord Road, seeks a Special Permit per Section 4.4.5 of the Zoning By-Law to add one equipment cabinet to the site.

Andy Cambiello, the representative for Metro PCS, introduced himself and the site acquisitions specialist present with him. He talked about the history of the tower site as referenced in the application packet and explained that the company is seeking a Special Permit to install one ground-mounted equipment cabinet, which will help them enhance their service for 4G technology. He said two cabinets currently sit on an existing concrete pad at the base of tower inside a fenced-in section, and they are requesting this Special Permit to install one more cabinet on that pad. Mr. Cambiello went on to explain that, while the company was doing its due diligence, they realized that although the

antennas at the top of the tower are mounted at the height of 134 feet – which was the maximum height allowed by Special Permit – the antennas themselves protrude a bit higher; therefore, in addition to the equipment cabinet installation, they also request the Board's permission to lower those antennas a few feet so that the highest point of the antenna will be flush with the 134-foot mark. Mr. Cambiello explained that the only other item that this application includes is the installation of a small work light on the equipment cabinet. He also handed out a summary from a radiation safety specialist which summarizes and outlines the details of this installation; he noted that the summary shows that the installation is well within the Federal Communications Commission's standards and regulations.

There was discussion about the details of the site plan and design drawings.

Mr. Cohen asked whether the work light would be on a motion sensor. Mr. Cambiello replied that it would be manual, and its only purpose is for the very rare occasion that cabinet needs an emergency repair at night. There was more conversation about this light, and Mr. Cambiello stated that no nearby houses would see the light, as it will be within the fenced-in compound area.

Mr. Cohen asked for confirmation that no antennas will actually be getting switched out, and that they will only be lowered. Mr. Cambiello said that was correct.

Mr. Cohen opened the hearing to the public. With no one from the public in attendance, Mr. Cohen closed the public hearing.

DELIBERATIONS:

Mr. Cohen said that the proposed installation is very simple and straightforward. He said it is an extremely minor change to the facility and he believes it meets the criteria of a Special Permit, in that it is not injurious or detrimental to the neighborhood and is in keeping with the intent and purpose of the By-Law. Mr. Dearing agreed, noting that he is grateful that the applicants have provided a concise summary of the installation from a radiation safety specialist, because it helps put everything in context and sums up the project simply and informatively.

MOTION:

Mr. Gildea moved to grant to Metro PCS, LLC, for 216 Concord Road, a Special Permit per Section 4.4.5 of the Zoning By-Law to add one equipment cabinet to the site, substantially as shown on Exhibits A and B.

Mr. Dearing seconded the motion.

Voting in favor: Cohen, Dearing, Gildea Colasante, and Gordon

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

MOTION:

Mr. Gildea moved to adjourn the meeting.

Mr. Colasante seconded the motion.

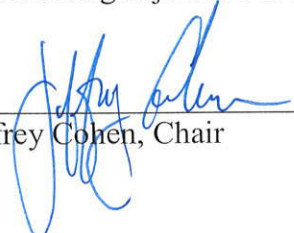
Voting in favor: Cohen, Dearing, Gildea Colasante, Gordon, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

The meeting adjourned at 12:10 PM.



Jeffrey Cohen, Chair 8/25/11 Date

Respectfully Submitted,

Scott Gould
ZBA Assistant

Attachments:

- Letter from Town Counsel regarding the Sign By-Law, signed and dated July 12, 2011
- Cover letter from Douglas Burns, signed and dated May 21, 2011
- Email from Carol and Martin Rogers, dated July 28, 2011
- Letter from Lisa A. Shaeffer, of 38 Glenridge Drive, dated July 27, 2011.